



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

ENE/150486

PRELIMINARY RECITALS

Pursuant to a petition filed July 02, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Energy - Milwaukee County in regard to Energy Assistance, a hearing was held on August 06, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's application for energy assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: LuElla Ellis, Energy Services Worker
Energy - Milwaukee County
Milwaukee, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner resides in an apartment for which the rent is subsidized by the government.
3. The Petitioner's lease states: "All electricity, gas, heat, air conditioning and hot water shall be paid by the RESIDENT, unless otherwise instructed by management agent." The Petitioner pays the landlord for her energy costs separate from her rent.

4. On May 2, 2013, the Petitioner applied for energy assistance.
5. The agency denied the Petitioner's application based on its determination that the Petitioner does not have an energy burden because she lives in subsidized housing.
6. On July 2, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Energy Assistance (EA) is mandated by Wis. Stat. §16.385. The Department of Administration administers the program. §16.385(2)(a). The Department does so by publishing the Wisconsin Home Energy Assistance Program (WHEAP) Operations Manual. The Manual must follow the mandate of the statute, but it is up to the Department to specify policies where the statute is silent.

To be eligible for energy assistance, the household must have a heat/electric burden on the date of the application and the economic unit must be responsible for providing current home heat and/or electricity, and have active account(s). WHEAP Manual § 2.2.5.

Responsibility for energy, heat and/or electricity, in the household can be demonstrated in a number of ways including, but not limited to:

- 1) Having an account with the energy supplier and directly paying the bills.
- 2) Having the cost of the energy (heat and/or electricity) included in the rent.
- 3) ***Making separate payments to the landlord for the energy supplied (heat and/or electricity).***
- 4) Gathering or cutting wood used for heating, or purchasing wood from a nonregistered supplier applications.*

WHEAP Manual § 2.2.5. (Emphasis added).

The following do not satisfy the energy burden requirement:

- ...
- 2) Applicants residing in government assisted housing (subsidized housing*) or receiving rental assistance and heat and/or electric is included in their rent. ***They are eligible for a benefit only if they pay the entire heat/electric bill directly and receive no assistance for the bill(s).***

WHEAP Manual § 2.2.5.1. (Emphasis added).

The WHEAP Manual contains a table of situations and determinations of energy burden: the Energy Burden Table. The table indicates that if "heat/electric is paid to the landlord or trailer park owner," the applicant has an energy burden. It further states that if "heat/electric are not included in rent [and] account is in the landlord's name [and] tenant pays landlord or energy provider," the applicant has an energy burden.

WHEAP, § 2.2.5.2.

In this case, the Petitioner testified that she lives in subsidized housing and pays rent of \$177/month. She further testified that she pays her energy bills for gas and electric. She produced a rent statement to demonstrate that she pays her energy bills separate from rent to the landlord who then pays the utility companies. She also produced a copy of her lease which states that all energy bills are the responsibility of the tenant.

The agency testified that it contacted the Petitioner's landlord who indicated that the client receives a utility allowance from HUD. The agency produced no other evidence of any energy assistance provided to the Petitioner other than this hearsay testimony of the landlord. The agency also testified that Petitioner's residence in government subsidized housing is sufficient to demonstrate that she has no energy burden. I disagree. The Manual clearly states that persons in subsidized housing are eligible for energy assistance if they have an energy burden.

The agency did not meet its burden of demonstrating that the Petitioner does not have an energy burden. The only evidence that she receives any energy allowance is hearsay and not supported by any other evidence. In addition, the Petitioner successfully rebutted the agency's testimony that she receives energy subsidies or allowance by producing a lease which clearly places responsibility for energy costs on her and a rent statement which shows that she pays the landlord for energy expenses.

Based on the evidence provided, the agency did not properly deny the Petitioner's application based on a determination that Petitioner does not have an energy burden because she lives in subsidized housing..

CONCLUSIONS OF LAW

The agency did not properly deny the Petitioner's application based on its determination that Petitioner does not have an energy burden because she lives in subsidized housing.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to reconsider the Petitioner's application of May 2, 2013 and re-determine her eligibility pursuant to that application based on the fact that Petitioner pays gas and electric to the landlord and therefore has an energy burden. The agency shall issue a new determination to the Petitioner based on its reconsideration and Petitioner shall have the right to appeal that new determination. The agency shall take these actions within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

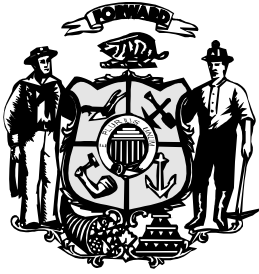
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Administration. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 101 East Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of October, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoeft, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 17, 2013.

Energy - Milwaukee County
DOA - Energy Assistance